

ORIGINAL



0000066094

RECEIVED

03

FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
Patrick J. Black (No. 017141)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone (602)916-5000
Attorneys for Pine Water Company

2007 JAN 30 P 4: 38

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B.
PUGEL AS TRUSTEES OF THE
RAYMOND R. PUGEL AND JULIE B.
PUGEL FAMILY TRUST, and ROBERT
RANDALL AND SALLY RANDALL

DOCKET NO: W-03512A-06-0407

Complainant,

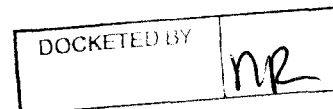
v.

PINE WATER COMPANY, an Arizona
Corporation,

Respondent.

Arizona Corporation Commission
DOCKETED

JAN 30 2007



ASSET TRUST MANAGEMENT, CORP.,

DOCKET NO: W-03512A-06-0613

Complainant,

v.

PINE WATER COMPANY, an Arizona
Corporation,

Respondent.

**ANSWER TO APPLICATION FOR
DELETION OF TERRITORY FROM
CERTIFICATE OF CONVENIENCE
AND NECESSITY OF PINE WATER
COMPANY**

Pine Water Company ("Pine Water") hereby responds to and answers the
September 25, 2006 Complaint to delete a portion of Pine Water's certificate of

1 convenience and necessity ("CC&N") filed by Complainant Asset Trust Management,
2 Corp. ("Complainant"). Pine Water's Answer to the Complaint filed by Raymond R.
3 Pugel and Julie B. Pugel as Trustees of the Raymond R. Pugel and Julie B. Pugel Family
4 Trust, and Robert Randall and Sally Randall was submitted on September 21, 2006.

5 **STATEMENT OF PERTINENT FACTS**

6 1. The history of water supply problems and limitations on new service
7 connections in Pine Water's service area is well documented. *See, e.g.*, Decision Nos.
8 56539 (July 12, 1989), 56654 (October 6, 1989), 57047 (August 22, 1990), 59753
9 (July 18, 1996), 60972 (June 19, 1998), 64400 (January 31, 2002), 67166 (August 10,
10 2004), 67823 (May 5, 2005).

11 2. The Complaint seeks approval from the Arizona Corporation Commission
12 ("Commission") to delete certain property from Pine Water's CC&N. Complainant's
13 property is currently subject to a total moratorium on any new commercial service
14 connections by orders of the Commission. Decision No. 67823 (extending the total
15 moratorium on main extension agreements and commercial connections first authorized in
16 Decision No. 59753 in order to "mitigate the potential detrimental effects associated with
17 adding a significant number of customers and/or high volume customers.")

18 3. On May 16, 2005, Pine Water rejected Complainant's request for a
19 commercial connection based on the moratorium established in Commission Decision
20 No. 59753, which was later affirmed by Decision 67823. *See* Complaint, Exhibit 3.

21 **RESPONSE TO ALLEGATIONS IN COMPLAINT**

22 4. Answering paragraph I.1, Pine Water lacks knowledge or information
23 sufficient to form a belief as to the truth of the allegations contained in paragraph I.1.

24 5. Answering paragraph I.2, Pine Water admits the allegations in paragraph
25 I.3, to the extent that Pine Water holds the *exclusive* right to provide domestic and
26 *commercial* water service to the Complainant's property.

1 6. Answering paragraph I.3, Pine Water admits the allegation contained in
2 paragraph I.3 concerning providing adequate water service to Complainant's property due
3 to a Commission imposed moratorium.

4 7. Answering paragraph I.4, Pine Water admits the allegation contained in
5 paragraph I.4 concerning providing adequate water service to Complainant's property due
6 to a Commission imposed moratorium.

7 8. Answering paragraph I.5, Pine Water alleges that the document speaks for
8 itself.

9 9. Answering paragraph II.1, Pine Water lacks knowledge or information
10 sufficient to form a belief as to the truth of the allegations contained in paragraph II.1.

11 10. Answering paragraph II.2, Pine Water admits the allegation contained in
12 paragraph II.2.

13 11. Answering paragraph III.1, Pine Water admits the allegation contained in
14 paragraph III.1.

15 12. Answering paragraph III.2, Pine Water denies the allegation contained in
16 paragraph III.2.

17 13. Answering paragraph III.3, Pine Water admits the allegation contained in
18 paragraph III.3.

19 14. Answering paragraph III.4, Pine Water denies the allegation contained in
20 paragraph III.4. Pine Water has made substantial efforts to find and improve the water
21 situation in Pine, Arizona.

22 15. Answering paragraph III.5, Pine Water lacks knowledge or information
23 sufficient to form a belief as to the truth of the allegations contained in paragraph III.5.

24 16. Answering paragraph IV.1, Pine Water asserts that the Commission rules
25 speak for themselves. Pine Water denies the remainder of the allegations contained in
26 paragraph IV.1.

1 17. Answering paragraph IV.2, Pine Water alleges that no response is necessary
2 because the allegation calls for a legal conclusion. To the extent a response is required,
3 Pine Water denies the allegation that Pine Water has breached its obligation to provide
4 water to all members of the public.

5 18. Answering paragraph IV.3, Pine Water denies the allegation contained in
6 paragraph IV.3.

7 19. Answering paragraph IV.4, Pine Water denies the allegation contained in
8 paragraph IV.4.

9 20. Answering paragraph IV.5, Pine Water denies the allegations contained in
10 paragraph IV.5.

11 21. Answering paragraph IV.6, Pine Water lacks knowledge or information
12 sufficient to form a belief as to the truth of the allegations contained in paragraph IV.6.

13 22. Answering paragraph IV.7, Pine Water denies the allegations contained in
14 paragraph IV.7 that it is unwilling to provide water service.

15 23. Answering paragraph IV.8, Pine Water lacks knowledge or information
16 sufficient to form a belief as to the truth of the allegations contained in paragraph IV.8.

17 24. Answering paragraph IV.9, Pine Water asserts that to the extent
18 Complainant is stating a legal conclusion, no response is necessary. Alternatively, Pine
19 Water denies the allegations contained in paragraph IV.9.

20 25. Answering paragraph V.1, Pine Water denies the allegations contained in
21 paragraph V.1.

22 26. Answering paragraph V.2, Pine Water denies the allegations contained in
23 paragraph V.2.

24 27. Answering paragraph V.3, Pine Water denies the allegations contained in
25 paragraph V.3.

26 28. Answering paragraph V.4, Pine Water denies the allegations contained in

1 paragraph V.4.

2 29. Answering paragraph VI.1, Pine Water asserts that an Order deleting
3 territory from Pine Water's CC&N is not in the public interest.

4 30. Answering paragraph VI.2, Pine Water denies that Complainant's location
5 of property within the CC&N is not a taking.

6 31. Answering paragraph VI.3, Pine Water denies that any Order of the
7 Commission is necessary or proper under the circumstances.

8 **AFFIRMATIVE DEFENSES**

9 1. Complainant fails to state a claim upon which relief can be granted.

10 2. Complainant's claims are barred by the doctrines of *res judicata* and
11 estoppel.

12 3. Complainant's request amounts to a private taking of Pine Water's property
13 rights;

14 4. The Complaint represents a collateral attack on Commission Decision
15 No. 67823.

16 5. Complainant has failed to exhaust available administrative remedies.

17 6. Pine Water reserves the right to assert all additional affirmative defenses
18 available, as more information becomes known about this case, including all defenses set
19 forth in Rule 8(c), Arizona Rules of Civil Procedure.

20 WHEREFORE, having answered the Complaint, Pine Water requests the
21 Commission to order the following:

22 A. That the Complaint be dismissed with prejudice, and that Complainant take
23 nothing thereby;

24 B. That nothing be done to delete any portion of Pine Water's current CC&N;
25 and

26 C. For such other and further relief as the Commission deems just and proper.

1 RESPECTFULLY SUBMITTED this 30th day of January, 2007.

2 FENNEMORE CRAIG, P.C.

3
4 By 

Jay L. Shapiro
Patrick J. Black
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Pine Water Company

5
6
7
8
9 ORIGINAL and ^{fifteen 15}~~thirteen (13)~~ copies of the
10 foregoing filed this 30th day of January, 2007:

11 Docket Control
12 Arizona Corporation Commission
13 1200 W. Washington St.
Phoenix, AZ 85007

14 Copy of the foregoing hand delivered
15 this 30th day of January, 2007, to:

16 Dwight D. Nodes
17 Assistant Chief Administrative Law Judge
18 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

19 Kevin Torrey
20 Legal Division
21 Arizona Corporation Commission
22 1200 West Washington
Phoenix, Arizona 85007

1 Ernest G. Johnson, Director
2 Utilities Division
3 Arizona Corporation Commission
4 1200 West Washington
Phoenix, Arizona 85007

5 COPIES mailed
6 this 30th day of January, 2007.

7 John G. Gliege
8 Stephanie J. Gliege
9 Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

10
11
12 By: Maria San Jose

13 1839138.1/75206.010
14
15
16
17
18
19
20
21
22
23
24
25
26